Petriman, Viorica

From: Petriman, Viorica
Sent: Wednesday, July 23, 2014 9:37 AM
To: Riva, Steven
Subject: Greenidge- March 29, 2005 Consent Decree
Attachments: Dec. 21, 2011-Greenidge NOx RACT (To comply with Consent Decree).pdf; Nov. 21, 2007-Greenidge Report (Consent Decree) .pdf

Steve:

It seems that Greenidge entered the Consent Decree on March 29, 2005.

Attached are 2 documents that mention the Consent Decree and NOx RACT issue.

December 21, 2011

SENT VIA FEDEX – SIGNATURE REQUIRED

Mr. Robert Sliwinski
New York State Department of
Environmental Conservation
625 Broadway
Albany, New York 12233-0001

Re: AES Greenidge LLC (Unit 4) and AES Westover LLC (Unit 8) --
NO_x RACT Determination Request

Dear Mr. Sliwinski:

This submission is made to the Department pursuant to 6 NYCRR § 227-2 to demonstrate that the control technology and attendant NO_x emission rates/limits provided for in the Consent Decree entered on March 29, 2005, and signed by U.S. District Judge Charles J. Siragusa in the United States District Court for the Western District of New York in *State of New York, et al. v. New York State Electric & Gas Corporation, et al.* (no. 05-CV-6014) ("AES Consent Decree"), establish the NO_x Reasonably Available Control Technology (RACT) for AES Greenidge LLC Unit 4 and AES Westover Unit 8 sources ("AES Units"). That is, the technology present at the AES Units, and the NO_x emission limits for the AES Units established pursuant to the AES Consent Decree, govern and satisfy the requirements of 6 NYCRR 227-2, including 227-2.3 and 227-2.4.

Consent decrees have attributes of contracts and judicial orders. *Local No. 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 519 (1986). The AES Consent Decree, among other measures, specifically and clearly establishes the technology and NO_x emissions limits for the AES Units.[1]

Foremost, page 11, Section VI.A. 37 of the AES Consent Decree states, in pertinent part: "The requirements for the operation of Greenidge Unit 4 using the MPC Project are governed by this Paragraph 37[.]" The remainder of paragraph 37 goes on to provide, in great detail, the NO_x emission limits for AES Greenidge Unit 4 under a variety of operating loads. *See AES Consent Decree, pp. 12-15.* The degree of specificity in the AES Consent Decree for NO_x emissions limits at AES Greenidge 4 Unit

[1] The language of the AES Consent Decree as concerns NO_x technology and limits for AES Westover Unit 8 is effectively the same as the language for AES Greenidge Unit 4 concerning the same topics. Therefore, for brevity, while this letter memorandum focuses on so much of the AES Consent Decree as regards AES Greenidge Unit 4, the same analysis and conclusions apply equally to AES Westover Unit 8.

includes scenarios for "High Operating Load,"[2] "Low Operating Range" and, significantly, a "final graph" "representing the final NO_x emission rate at a given heat input [ ]." *Id. at p. 14, ¶ VI.A.26.*

Likewise, the AES Consent Decree specifies the technology to be used at AES Greenidge Unit 4 to achieve such limits. *Id. at p. 11, ¶ VI.A.37* "[ ] using the MPC Project [ ]"; and *id. at p. 7, III.19* (defining "MPC Project").

Notably, AES has been operating the AES Units using the control technology and under the respective final NO_x emission graphs submitted to the Department at the requisite emission limits--all as established in the AES Consent Decree--for years.

In addition, page 24, Section 42.C, paragraph 44 of the AES Consent Decree states, in pertinent part:

> "The emission limits (with corresponding "compliance data," i.e., the date each permit limit takes effect pursuant to this Consent Decree) set forth in Paragraphs 27 and 42, shall be incorporated into the Title V or Air State Facility permits for each of those Plants. [ ].
>
> [A]ny term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree (subject to the terms of Section XIII herein), regardless of whether such limit has or will become part of a Title V or Air State Facility permit."

The primacy of "*any* term or limit" in the AES Consent Decree over any Title V permit underscores the controlling and enduring nature of the AES Consent Decree as regards NO_x control requirements. Moreover, application of the emission limits and related provisions contained in 6 NYCRR 227-2.4 would conflict with the averaging periods and technological limitations, including the startup/shutdown plan set forth in the AES Consent Decree -- another indication that the AES Consent Decree establishes the NO_x RACT requirements for the AES Units.

Finally, and of equal significance to the above, the AES Consent Decree establishes the AES Greenidge Unit 4 MCP Project and its emission limits and technology, and the AES Westover Unit 8 Clean Coal Project or "CCP"[3] and its emission limits and technology, as the Best Available Control Technology ("BACT") for these units. BACT here is, by definition, more stringent than RACT, particularly when

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[2] The AES Consent Decree contains a number of defined terms.

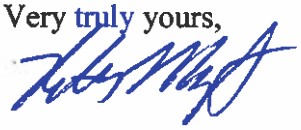
[3] "Clean Coal Permit" or "CCP" is defined at p. 7, Section III.18 of the AES Consent Decree and applied as regards NO_x emission limits and graphs beginning on p. 19 thereof.

considering the same pollutant, NO_x, was a centerpiece of the AES Consent Decree and the same sources are being considered for RACT as they were for BACT under the AES Consent Decree. Likewise, it follows that because EPA has announced that compliance with the Cross-State Air Pollution Rule ("CSAPR") is likely to constitute compliance with the best available retrofit technology requirements, *see Clean Air Report – www.InsideEPA.com – November 10, 2011 at 10,* compliance with CSAPR should constitute compliance with NO_x RACT requirements.

In addition, AES Westover is providing notice that it intends to permanently shutdown the auxiliary boiler by December 31, 2014.

Accordingly, AES respectfully requests that the Department affirm that the provisions of the AES Consent Decree, including the control technology listed therein and currently employed at the AES Units, establish NO_x RACT for such sources under 6 NYCRR 227-2.

Very truly yours,



Peter Norgeot

cc: B. Rady/AES Greenidge

D. Daniels/AES Westover

Bcc Peter Bajc/AES Somerset
Jerry Goodenough/AES Cayuga
Jon Reimann/AES Somerset
Robert Alessi/DL

November 21, 2007

Mr. Thomas Marriott
RAPCE, Region 8
New York State Department of Environmental Conservation
6274 E. Avon-Lima Road
Avon, New York 14414-9519

Re: AES Greenidge Unit 4 MPC Project

Dear Tom:

We are writing in follow up to our meeting of October 29, 2007 regarding the MPC project for Unit 4. As has been communicated to the Department on various occasions, AES has spent the past year on efforts to modify the MPC project to achieve the emission limits in the Consent Decree ("Good Faith Efforts"). In accordance with the Consent Decree, we will be providing a final report/submittal to the Department by February, 2008 which will include final proposed NOx emission rates, supporting materials, and other information for Greenidge Unit 4. In the interim, with this letter we are providing you with additional information regarding the Good Faith Efforts.

As we discussed during our October 29 meeting, we are providing a NOx emissions rate curve based on our Good Faith Efforts (Attachment 1). We are also attaching to this letter a copy of a power point which was used to facilitate our discussion during the meeting in which we further detailed our Good Faith Efforts. (Attachment 2). This attachment, which also contains the curve in Attachment 1, was sent to the Department (Mr. Grabar) electronically on October 29. For the convenience of the Department, we are re-sending these documents so you can have them under one transmittal letter. The power point/presentation, in addition to my letter dated October 17 (Attachment 3), and other communications with the Department, details the activities we have undertaken and the progress we have made in satisfaction of our Good Faith Efforts obligations including to achieve a NOx emission rate of 0.10 lb/mmBTU on a 30-Operating-Day Rolling Average since we commenced Initial Operation in November, 2006. As has been discussed with the Department, the Good Faith Efforts include installation of additional equipment, optimization, testing, and operational adjustments.

For these Good Faith efforts, we have expended in excess of $1,478,000 to achieve the NOx emission limit and to otherwise modify the NOx emission control systems identified in the Consent Decree. Because we have expended over $1,478,000 on the Good Faith Efforts, and the total capital cost of the MPC Project is $40,504,423, we have incurred capital expenditures in the aggregate in excess of 1% of the total capital cost of the MPC Project for Good Faith Efforts in accordance with pages 5, 12, and 13 of the Consent Decree. Attached (as Attachment 4), please find copies of invoices and other documentation of payments by AES for Good Faith Efforts expenditures. We will also be undertaking further, like expenditures, including completing

upgrades to the air system and additional lime storage capacity. These further expenditures are not included in the $1,478,000 calculation, and we expect them to total over approximately an additional $580,000. Attachment 5 contains copies of invoices and payments for the MPC project capital costs so the Department can see the total capital cost of the MPC Project -- $40,504,423.

As we discussed, the hybrid SNCR/SCR NOx control process is consistently able to achieve an emissions rate of 0.15 lbs/mmbtu for NOx at high loads. Despite our Good Faith Efforts to optimize the system for reductions, however, the unit is not able to achieve a 30-Operating-Day Rolling Average NOx emissions rate of 0.10 lbs/mmbtu. Nonetheless, because the NOx emissions control system has successfully operated at lower loads than anticipated, annual NOx mass emissions reductions are consistent with MPC project objectives.

As stated above, we will be preparing our final report/submittal, contemplated by the Consent Decree, to the Department which will include, among other things, NOx emission curves, a final proposed NOx emission rate and other supporting documentation. In the interim, we will continue to achieve a high load NOx emission rate between and including 0.10 and 0.15 lbs/mmbtu on a 30-Operating Day Rolling Average in accordance with the Consent Decree.

We look forward to continuing to work with the Department on the MPC Project and appreciate the time and efforts you and your colleagues have contributed to this process. Please feel free to contact me should you wish to discuss this matter further.

Sincerely,

Douglas J. Roll

Douglas J. Roll
Plant Manager

cc: Michelle Crew
Blaise Constantakes
Franc Grabar
Dewey & LeBoeuf, LLP

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